

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

11 ANDREY LARSHIN,

No. 2:21-cv-0122 JAM KJN P

12 Petitioner,

13 ORDER

14 B. KIBLER,¹

15 Respondent.

17 Petitioner, a state prisoner, proceeds pro se with an application for writ of habeas corpus
18 pursuant to 28 U.S.C. § 2254. Respondent filed a motion to dismiss this action alleging the
19 petition was successive, untimely, included an unexhausted claim, and failed to raise a cognizable
20 federal claim. On September 9, 2021, respondent withdrew the argument that the instant petition
21 was successive.²

22 On April 11, 2019, petitioner filed a petition for writ of habeas corpus in the California
23 Supreme Court. (ECF No. 16-18 (Lodged Document (“LD”) 15).) The petition was pending at

25¹ Brian Kibler, current warden of High Desert State Prison where petitioner is currently housed,
26 is substituted as respondent in this action. Fed. R. Civ. P. 25(d).

27² The parties agree that petitioner received a new judgment that corrected his award of
28 presentence custody credits to include five more days. (ECF No. 18 at 2; see also ECF No. 21 at
1, citing see Gonzalez v. Sherman, 873 F.3d 763, 769 (9th Cir. 2017) (in California, the
recalculation of credits awarded to a criminal defendant constitutes a new judgment).)

1 the time respondent filed the motion to dismiss. (ECF No. 16-19 (LD 16).) Pursuant to the state
2 court's website, the California Supreme Court denied the petition on June 30, 2021.³

3 On October 12, 2021, petitioner was informed of his options for seeking stays if he
4 intended to pursue his state court remedies for any unexhausted claim, and granted thirty days to
5 file a motion to amend, along with his second amended petition. Petitioner did not file a motion
6 for stay, but rather filed a motion to amend and a second amended petition.

7 Good cause appearing, petitioner's motion to amend is granted. Because respondent's
8 motion to dismiss was directed to the original petition, and petitioner has now filed a second
9 amended petition, the motion to dismiss is dismissed without prejudice to renewal. If respondent
10 renews the argument that this action is barred by the statute of limitations, respondent shall
11 address whether the new state court judgment re-started the limitations clock. See Gonzalez, 873
12 F.3d 763; Shropshire v. Baca, 702 F. App'x 629, 630 (9th Cir. 2017). Respondent shall also
13 provide a copy of any new judgment granting pre-sentence custody credits.

14 Accordingly, IT IS HEREBY ORDERED that:

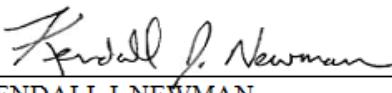
15 1. Brian Kibler, current warden of High Desert State Prison, is substituted as respondent
16 in this action;

17 2. Petitioner's motion to amend (ECF No. 24) is granted;

18 3. Respondent's motion to dismiss (ECF No. 15) is denied without prejudice; and

19 4. Respondent is granted 45 days in which to renew the motion to dismiss.

20 Dated: December 6, 2021

21 
22 KENDALL J. NEWMAN
23 UNITED STATES MAGISTRATE JUDGE
24

25 ³ The court may take judicial notice of facts that are "not subject to reasonable dispute
26 because it . . . can be accurately and readily determined from sources whose accuracy cannot
27 reasonably be questioned," Fed. R. Evid. 201(b), including undisputed information posted on
28 official websites. Daniels-Hall v. National Education Association, 629 F.3d 992, 999 (9th Cir.
2010). It is appropriate to take judicial notice of the docket sheet of a California court. White v.
Martel, 601 F.3d 882, 885 (9th Cir. 2010). The address of the official website of the California
state courts is www.courts.ca.gov.